

State Water Resources Control Board Workshop

Proposed Updates to Cannabis Policy, Staff Report, and Cannabis Cultivation General Order

October 16, 2018
Board Meeting Item No. 6
State Water Resources Control Board



Workshop Agenda

- ▶ State Water Board staff presentation
- ▶ Opportunity for public comments
- ▶ Following public comments staff will be available in lobby
 - ▶ Answer any additional questions
 - ▶ Help cannabis cultivators start their application for the General Order Permit and Small Irrigation Use Registration

Presentation Outline

- ▶ Water Boards Responsibilities
- ▶ Water Boards Cannabis Program Background
- ▶ Overview of Proposed Updates
- ▶ Overview of New Websites
- ▶ Timeline and Next Steps

Water Boards Responsibilities

Legislative Authority

- ▶ Three bills adopted in 2015 – Assembly Bills (AB) 243 and 266; Senate Bill (SB) 643 (MMRSA)
- ▶ SB 837 adopted in June 2016 – included clean up language for three 2015 bills (MCRSA)
- ▶ Proposition 64 passed November 2016, allowing recreational cannabis use for adults (AUMA)
- ▶ SB 94 adopted June 2017 – consolidated provisions of MCRSA and AUMA and established the Medicinal and Adult-Use Cannabis Regulations and Safety Act (MAUCRSA)



Water Boards Responsibilities (cont'd)

“The state board or appropriate regional board shall address discharges of waste resulting from cannabis cultivation under [MAUCRSA] and associated activities, including by adopting a general permit, establishing waste discharge requirements...”

Water Code Section 13276 (b)

Water Boards Responsibilities

Ensure individual and cumulative effects of water diversion and discharge associated with cannabis cultivation do not affect instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability

*Business and Professions Code section
26060.1(b)*



Water Boards Responsibilities (cont'd)

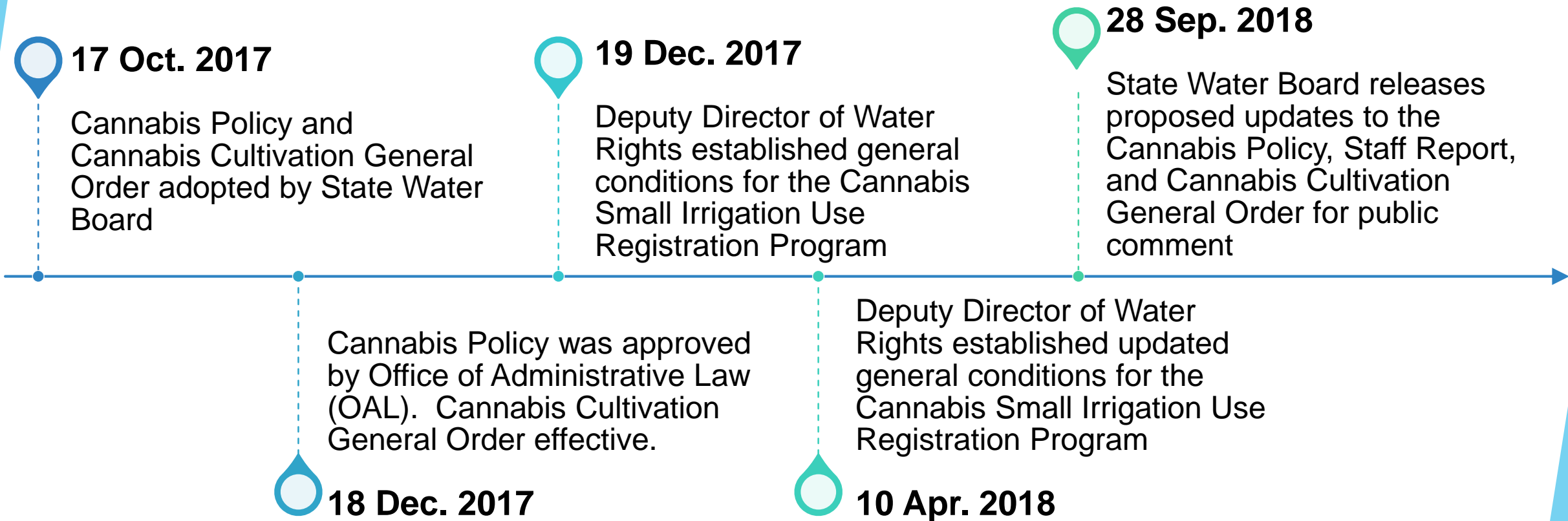
The State Water Board, in consultation with CDFW, shall adopt principles and guidelines for diversion and use of water for cannabis cultivation:

- ▶ *Shall include measures to protect springs, wetlands, and aquatic habitat from negative impacts of cannabis cultivation*
- ▶ *May include requirements that apply to groundwater extractions*

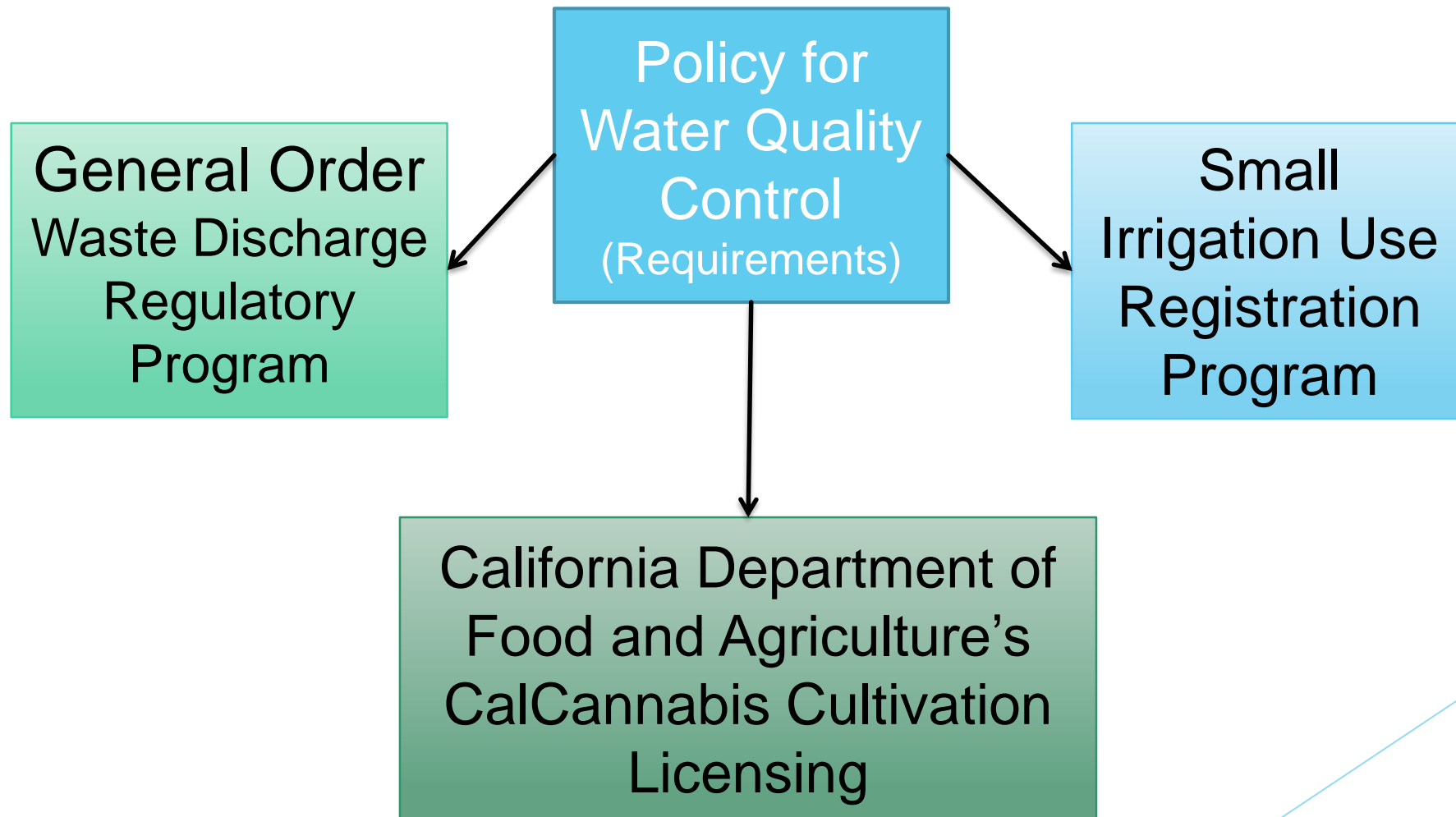
Water Code Section 13149(a)(1)(A) and (a)(2)

Water Boards Cannabis Program Background

Water Boards - Cannabis Cultivation Program Background



Cannabis Policy Regulatory Flow



Cannabis Cultivation Policy - Principles and Guidelines for Cannabis Cultivation

Main Document

- Provides overview of Water Boards' program and context for how it fits with other regulatory programs
- Establishes 14 regions throughout state for instream flow requirements
- Continuing authority to amend Policy
- Describes how Policy is enforced

Attachment A: Cannabis Cultivation Requirements

- Section 1 – Definitions, General Requirements, and Prohibitions
- Section 2 – Requirements for Water Diversion and Waste Discharge (10 subsections)
- Section 3 – Numeric and Narrative Instream Flow Requirements
- Section 4 - Watershed Compliance Gage Assignments
- Section 5 – Planning and Reporting
- Section 6 – Useful Guidance Documents

Overview of Proposed Updates

Cannabis Policy and Cannabis Cultivation General Order Update

- ▶ Main updates proposed to Cannabis Policy and Cannabis Cultivation General Order are focused on:
 - ▶ Onstream Reservoirs
 - ▶ Tribal Buffers (permission to cultivate on and/or within 600 feet)
 - ▶ Requirements for Conditionally Exempt Indoor Cultivation Sites
 - ▶ Minor clean up and clarifications based on feedback received during initial implementation efforts
- ▶ Proposed updates are shown in:
 - ▶ red bold/underline for new text
 - ▶ ~~red bold/strike out~~ for deleted text
- ▶ Broader review and update will be completed in future (anticipated 2021/2022)

Updates to Main Document of Cannabis Policy

Clarify Cannabis Cultivation General Order conditional exemption requirements for indoor commercial cannabis cultivation activities

- ▶ Comply with Cannabis Policy and all applicable Requirements in Attachment A, and either:
 - ▶ Discharge all industrial wastewaters generated to a permitted wastewater treatment collection system and facility that accepts cannabis cultivation wastewater; or
 - ▶ Collect all industrial wastewater in an appropriate storage container to be stored and properly disposed of by a permitted wastewater hauler at a permitted wastewater treatment facility that accepts cannabis cultivation wastewater

Attachment A – Tribal Buffers

- ▶ Policy requires cannabis cultivators to obtain written permission from affected tribe if cultivation area is on or within 600 feet of Tribal lands
- ▶ Updated requirement to improve implementation and provide more options for tribes to approve/deny requests:
 - ▶ Water Boards notify tribes of request to cultivate on or within 600 feet of tribal lands; 45-day period for the tribe to accept, reject, or remain silent (considered acceptance)
 - ▶ Tribe can inform State Water Board that the tribe does not approve any cannabis cultivation on and/or within 600 feet
 - ▶ Tribe can waive the 45-day notification period for all cannabis cultivation on and/or within 600 feet (blanket approval)

Attachment A - Requirements for Conditionally Exempt Indoor Cultivation Sites

- ▶ Added Requirement 38 to provide exemption from riparian setbacks and tribal buffers for indoor cultivation sites that meet certain conditions
- ▶ Recognizes certain indoor cultivation sites pose less of a threat to discharge to waters of the state
- ▶ Exemption criteria differ for indoor cultivation sites that existed prior to October 1, 2018 versus new sites (options outlined on subsequent slides)
- ▶ Riparian setback exemption does not apply if Regional Water Board's Executive Officer determines that an exemption from riparian setbacks is not protective of water quality

Attachment A - Requirements for Conditionally Exempt Indoor Cultivation Sites (cont'd)

Option 1: Building permit on file with county, city, or local jurisdiction and started construction **prior to October 1, 2018**

- ▶ Valid certificate of occupancy for indoor cannabis cultivation; and
- ▶ Either:
 - ▶ Connected to and discharges any industrial wastewater to a permitted wastewater treatment collection system; or
 - ▶ Discharges any industrial wastewater directly to storage tank, and discharge is properly disposed of by a permitted wastewater hauler at a permitted wastewater treatment facility



Cannabis Policy,
Attachment A,
Section 1,
Requirement 38

Attachment A - Requirements for Conditionally Exempt Indoor Cultivation Sites (cont'd)

Option 2: Building permit on file with the county, city, or local jurisdiction and construction **started on or after October 1, 2018**

- ▶ Valid certificate of occupancy for indoor cannabis cultivation; and
- ▶ Connected to and discharges any industrial wastewater to a permitted wastewater treatment collection system
 - ▶ If the permitted wastewater treatment collection system and facility that the structure is connected to does not accept cannabis cultivation wastewater, the cultivator may still qualify
 - ▶ Discharges any industrial wastewater directly to storage tank, and discharge is properly disposed of by a permitted wastewater hauler at a permitted wastewater treatment facility

Attachment A - Onstream Reservoirs

- ▶ Modify Policy to provide path for cultivators with certain pre-existing onstream reservoirs to obtain a Cannabis Small Irrigation Use Registration (SIUR) if:
 - ▶ **Reservoir existed prior to October 1, 2016;** and
 - ▶ Deputy Director for Division of Water Rights and CDFW determine removal of reservoir or installation of off-stream storage would cause more environmental damage than continuing to use onstream reservoir for diversion and storage

Attachment A - Onstream Reservoirs (cont'd)

- ▶ As part of filing for a Cannabis SIUR, cannabis cultivator shall agree to:
 - ▶ Request a determination from Deputy Director and CDFW to determine whether removal of reservoir or installation of off-stream storage would cause more environmental damage than continuing to use existing onstream reservoir for diversion and storage
 - ▶ Accept any conditions imposed before or after issuance of Cannabis SIUR as part of determinations to ensure any modifications and ongoing operation of the onstream reservoir are protective of water quality and aquatic resources (bypass flows, diversion rates, etc.)
 - ▶ Withdrawal of water from onstream reservoir for cannabis cultivation activities is only allowed during surface water diversion forbearance period
- ▶ Onstream reservoirs that do not qualify for ongoing operation under the SIUR will either need to be removed or otherwise rendered incapable of storing water

Attachment A – Onstream Reservoirs (cont'd)

- ▶ Existing Water Right Registrations
 - ▶ Onstream reservoirs with an existing valid water right registration for onstream storage that does not identify commercial irrigation as a purpose of use (i.e., Livestock Stockpond Use Registrations, Small Domestic Use Registrations) may also file for a Cannabis SIUR, thereby requesting Deputy Director (or designee) and CDFW to make determinations and condition the Cannabis SIUR

Attachment A – Onstream Reservoir (cont'd)

- ▶ State Water Board may impose additional conditions before or after issuance of Cannabis SIUR to:
 - ▶ Ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect instream flows needed for fish spawning, migration, and rearing, and flows needed to maintain natural flow variability;
 - ▶ Ensure that cultivation does not negatively impact springs, riparian habitat, wetlands, or aquatic habitat; and
 - ▶ Otherwise protect fish, wildlife, fish and wildlife habitat, and water quality

Attachment A – Onstream Reservoir Measurement Requirement

- ▶ Cannabis cultivators with onstream reservoirs shall install and maintain a measuring device (e.g., water level sensor and area-capacity curve) capable of recording the date, time, and volume of water diverted at an hourly or more frequent basis, year-round
- ▶ Measurement device shall be installed and calibrated by a Qualified Professional (including development of area-capacity curve)
- ▶ Maintain hourly depth and volume records from measurement device and area-capacity curves at cultivation site
 - ▶ Shall make records available for review upon request by staff from Water Boards or CDFW

Other Policy Clarifications and Cleanups

- ▶ Examples include:
 - ▶ Added definition for Industrial Wastewater
 - ▶ Updated language in Attachment A, Section 1, Requirement 21 to clarify that cultivators do not need to physically go the CHRIS information center
 - ▶ Updated Staff Report to support Cannabis Policy changes
 - ▶ Fixed grammatical and formatting errors



Cannabis Cultivation General Order

- ▶ Applicable Policy updates were also made to Cannabis Cultivation General Order to ensure consistency

<u>Regional Water Board</u>	<u>Mailing Address</u>	<u>E-Mail Address</u>
North Coast	5550 Skylane Blvd., Ste. A Santa Rosa, CA 95403	Northcoast.cannabis@waterboards.ca.gov
San Francisco Bay	1515 Clay Street, Ste. 1400 Oakland, CA 94612	Sanfranciscobay.cannabis@waterboards.ca.gov
Central Coast	895 Aerovista Place, Ste. 101 San Luis Obispo, CA 93401	Centralcoast.cannabis@waterboards.ca.gov
Los Angeles	320 W. 4th Street, Ste. 200 Los Angeles, CA 90013	Losangeles.cannabis@waterboards.ca.gov
Central Valley Redding Office	364 Knollcrest Drive, Ste. 205 Redding, CA 96002	Centralvalleyredding@waterboards.ca.gov
Central Valley Sacramento Office	11020 Sun Center Drive, Ste. 200 Rancho Cordova, CA 95670	Centralvalleysacramento@waterboards.ca.gov
Central Valley Fresno Office	1685 E Street Fresno, CA 93706	Centralvalleysacramento@waterboards.ca.gov
Lahontan South Lake Tahoe Office	2501 Lake Tahoe Blvd. South Lake Tahoe, CA 96150	Lahontan.cannabis@waterboards.ca.gov
Lahontan Victorville Office	15095 Amargosa Road - Bldg 2, Ste. 210 Victorville Ca 92394	Lahontan.cannabis@waterboards.ca.gov
Colorado River	73-720 Fred Waring Dr., Ste. 100 Palm Desert, CA 92260	Lahontan.cannabis@waterboards.ca.gov
Santa Ana	3737 Main Street, Suite 500 Riverside, CA 92501	Santaana.cannabis@waterboards.ca.gov
San Diego	2375 Northside Drive, Ste. 100 San Diego, CA 92108	Sandiego.cannabis@waterboards.ca.gov

Cannabis Cultivation General Order

- ▶ Monitoring and Reporting Program emails updated
- ▶ Requires existing enrollees to comply with water diversion and instream flow requirements
- ▶ Removed redundant findings

Overview of New Websites and Tools

Overview of New Websites and Tools

▶ Online Cannabis Compliance Gage Mapping Tool

- ▶ https://www.waterboards.ca.gov/water_issues/programs/cannabis/online_mapping_tool.html

▶ Map of Existing Flow Requirements

- ▶ https://www.waterboards.ca.gov/water_issues/programs/cannabis/existing_flow_req.html

▶ Cannabis Compliance Gages

- ▶ https://www.waterboards.ca.gov/water_issues/programs/cannabis/tessmann_instream_flow_requirements.html

Table 2. Upper Sacramento Region Compliance Gage Numeric Instream Flow Requirements

Gage ID	Gage Name	Source	November (cfs)	December (cfs)
11361000	BURNEY C A BURNEY FALLS NR BURNEY CA	USGS	85.6	85.6
HCB	HAT CK BLW HAT CK	CA Dept of Water Resources	86.1	86.1
MCD	MCCLLOUD RIVER NEAR MCCLLOUD	Pacific Gas & Electric	315.6	365.4
11342000	SACRAMENTO R A DELTA CA	USGS	491.0	644.5
11355500	HAT C NR HAT CREEK CA	USGS	72.7	74.8
PRB	PH-27 PIT RIVER AT BIG BEND	Pacific Gas & Electric	565.8	565.8
P35	PIT RIVER BELOW LAKE BRITTON	Pacific Gas & Electric	469.3	469.3
PMN	PIT RIVER NEAR MONTGOMERY CREEK	US Bureau of Reclamation	719.4	719.4
PR4	PH-30 PIT RIVER BLW PIT NO 4 DAM	Pacific Gas & Electric	518.7	518.7
11355010	PIT R BL PIT NO 1 PH NR FALL RIVER MILLS CA	USGS	377.4	377.4

Cannabis Compliance Gages Website

- ▶ Provides a current list of Cannabis Policy's active compliance gages and associated instream flow requirements
- ▶ Organized by Cannabis Policy Regions
- ▶ Not to be used to determine whether or not diversions on a specific day can occur



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Water Boards



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Home | Water Issues | Programs | Cannabis | Online Mapping Tool

Online Cannabis Compliance Gage Mapping Tool

Cannabis Policy Compliance Gage Assignments - Mapping Tool Description and Purpose

This webpage is designed to provide cannabis cultivators that divert from surface water with a tool to check whether they may divert for cannabis cultivation on a given day. [A summary of some of the main Cannabis Policy's requirements related to diversion of water for cannabis cultivation is available below.](#)

How to Use the Mapping Tool:

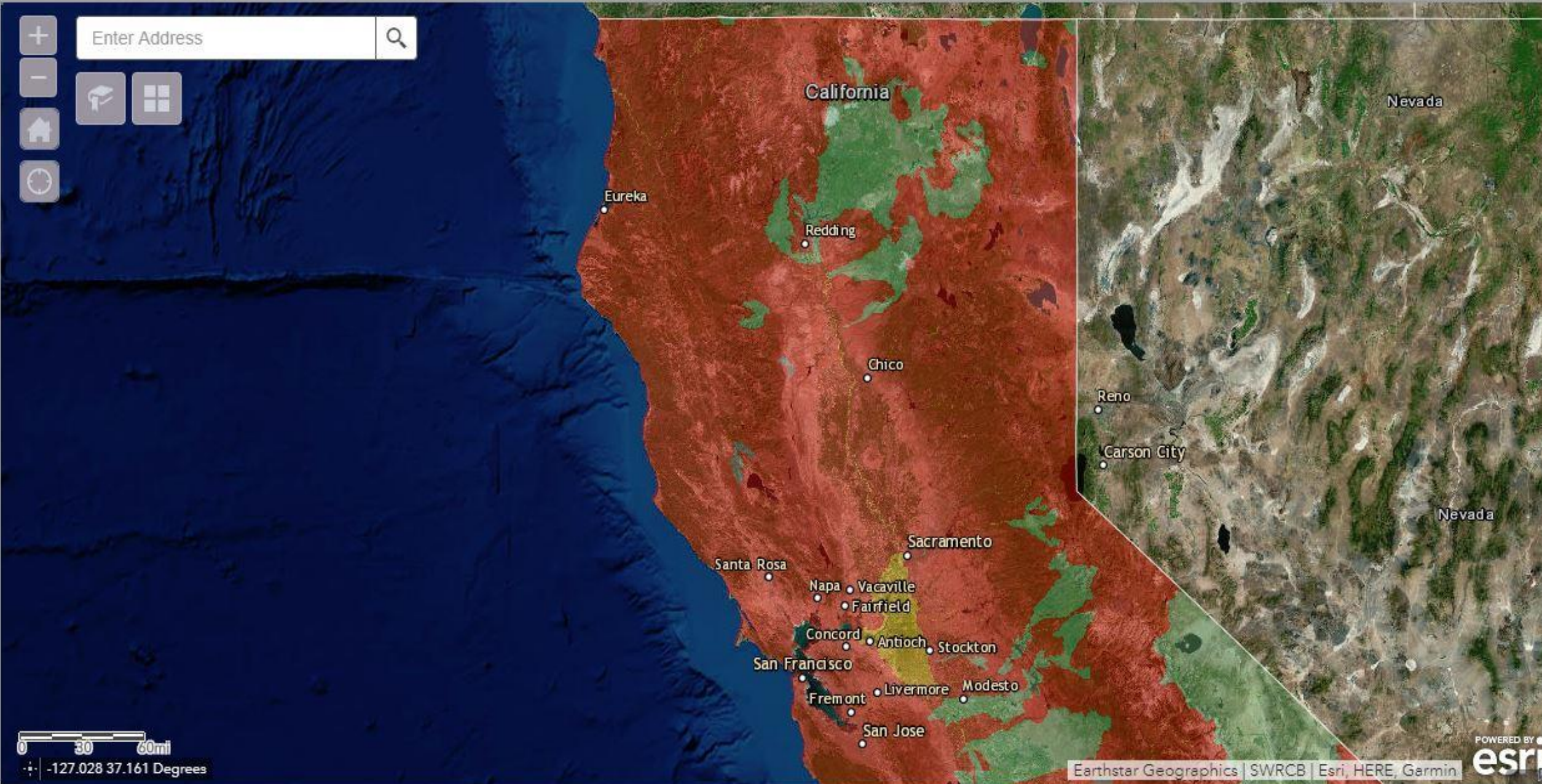
1. Navigate to your point of diversion by either entering your address in the search bar or zooming in on the map. (You may need to click on the "OK" box if it's your first time visiting the mapping tool.)
2. Click on the map to identify the location of your point of diversion and a Gage Pop-Up Box will appear with information about whether the **DIVERSION IS AUTHORIZED** or the **DIVERSION IS NOT AUTHORIZED** for that day. Cannabis cultivators are required to check if water is available to divert at their point of diversion (e.g., pump inlet) at least daily, prior to diverting.
3. If you see **"More Information Needed"** in the Gage Pop-Up Box, please refer to the Instructions for Using the Cannabis Compliance Gaging Tool below.
4. If you see **"Contact SWRCB at CannabisWR@Waterboards.ca.gov"** in the Gage Pop-Up Box, please refer to the Instructions for Using the Cannabis Gage Mapping Tool.

For more detailed instructions on how to use the Mapping Tool, see the [Instructions for Using the Cannabis Compliance Gage Mapping Tool](#). For more information about the terms (e.g., DIVERSION AUTHORIZED, etc.), please refer to the [Definitions of Pop-Up Box Attributes and Fields](#).

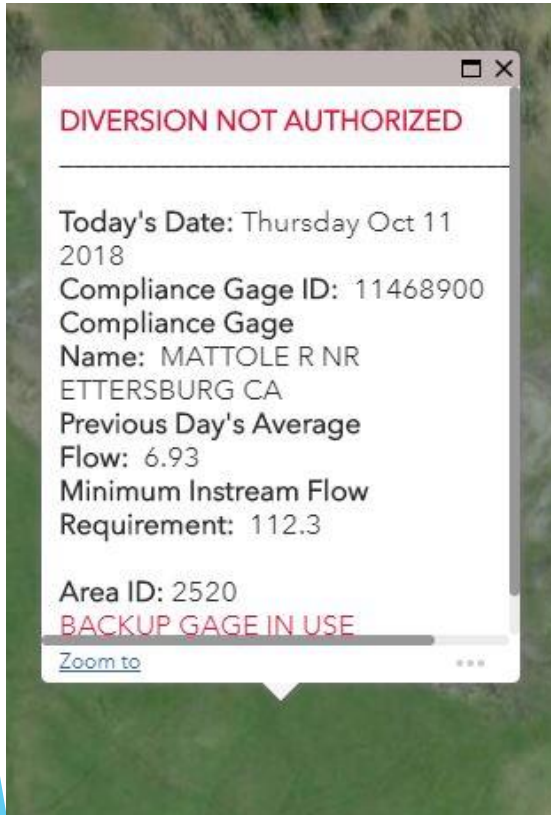
The map below identifies compliance gage assignments for cannabis cultivators with a surface water diversion based on the location of the point of diversion.



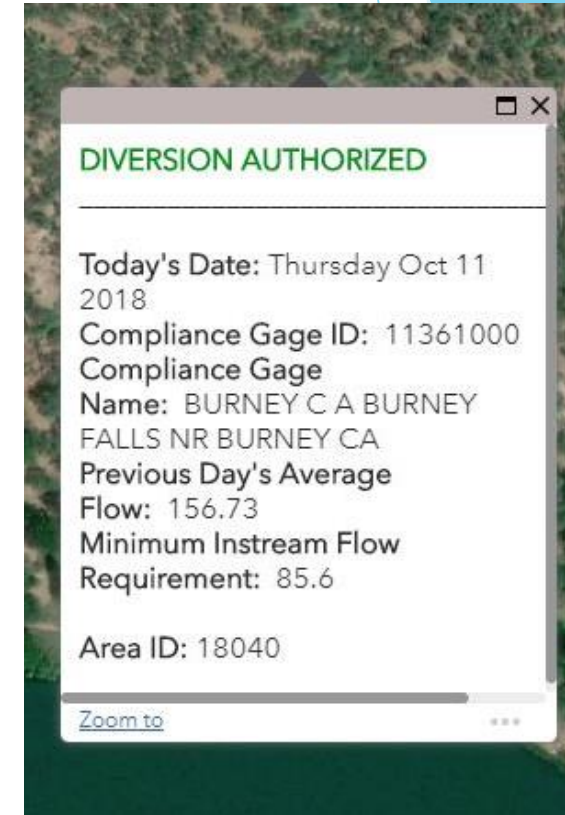
The map below identifies compliance gage assignments for cannabis cultivators with a surface water diversion based on the location of the point of diversion.



Online Mapping Tool (cont'd)



- ▶ Click on map to identify location of your point of diversion and a Gage Pop-Up Box will appear with information about whether **DIVERSION IS AUTHORIZED** or **DIVERSION IS NOT AUTHORIZED** for that day
- ▶ Cannabis cultivators are required to check if water is available to divert at their point of diversion (e.g., pump inlet) at least daily, prior to diverting



Online Mapping Tool (cont'd)

- ▶ Indicates that surface water diversion is subject to an existing instream flow requirement that may be more restrictive than what is prescribed by Cannabis Policy
- ▶ Cannabis cultivators responsibility to determine whether they are following all instream flow requirements prior to diverting

More Information Needed

Today's Date: Thursday Oct 11 2018

Compliance Gage ID: DELTA

Compliance Gage Name: DO NOT DIVERT - TERM 91 IN EFFECT

Previous Day's Average Flow:
Minimum Instream Flow Requirement:

[Click Here For Attachment](#)

Area ID: 47480

[Zoom to](#)

Online Mapping Tool (cont'd)

Dry Water Year Type			
Month	Existing Flow Requirement*	Cannabis Policy Flow Requirement	Effective Flow Requirement
November	70 cfs	124 cfs	124 cfs
December	70 cfs	142 cfs	142 cfs
January	70 cfs	187 cfs	187 cfs
February	70 cfs	195 cfs	195 cfs
March	70 cfs	172 cfs	172 cfs
Normal Water Year Type			
Month	Existing Flow Requirement*	Cannabis Policy Flow Requirement	Effective Flow Requirement
November	95 cfs	124 cfs	124 cfs
December	95 cfs	142 cfs	142 cfs
January	95 cfs	187 cfs	187 cfs
February	95 cfs	195 cfs	195 cfs
March	80 cfs	172 cfs	172 cfs

*Federal Energy Regulatory Commission has issued a new license to the Pacific Gas and Electric Company for the DeSabra-Centerville Hydroelectric Project, which asserts minimum instream flow requirement at USGS gage 11390000 as summarized in the above table.

Web Link to Water Quality Certification:

[Water Quality Certification for the DeSabra-Centerville Hydroelectric Project](#)

Existing Flow Requirements

Many rivers in California have existing instream flow requirements through licenses issued by the Federal Energy Regulatory Commission for hydropower projects, Biological Opinions issued by the National Marine Fisheries Service or the United States Fish and Wildlife Service, or water right orders and decisions issued by the State Water Resources Control Board (State Water Board). This webpage provides a comprehensive list of existing instream flow requirements in California, as reflected to the best knowledge of State Water Board staff. While this webpage was developed to assist cannabis cultivators with compliance with the Cannabis Policy, it has utility beyond cannabis cultivation. Cannabis cultivators should refer to the Cannabis Cultivators section below.

The estimated geographic extent of each requirement is represented by a polygon layer in the interactive GIS mapping tool below. Clicking on a polygon will provide an overview of the flow requirement for the applicable stream reach. More information on the existing instream flow requirements is located below the mapping tool and is organized by Cannabis Policy region and stream reach. The associated compliance gages are also included, as applicable.

While the goal of this website is to compile a comprehensive list of existing instream flow requirements in California, the list may be incomplete and the estimated geographic extent of the flow requirements may have been misinterpreted. If you have comments, corrections, or additional information, you are encouraged to contact State Water Board staff by email at CannabisWR@waterboards.ca.gov.

Quick Links to Individual Regions

- Klamath
- Upper Sacramento
- North Eastern Desert
- North Coast
- Middle Sacramento
- Southern Sacramento
- North Central Coast
- Tahoe
- South Central Coast
- San Joaquin
- Mono
- Kern
- South Coast
- South Eastern Desert

Cannabis Cultivators:

Per the Cannabis Policy, cannabis cultivators shall comply with either: (a) existing instream flow requirements (e.g., Biological Opinion or Federal Energy Regulatory Commission license flow requirements); or (b) the Cannabis Policy Tessmann instream flow requirements, whichever is greater. Cannabis cultivators should refer to the Online Cannabis Policy Compliance Gage Mapping Tool ([online mapping tool](#)) to determine whether an existing flow requirement may apply to their point of diversion.



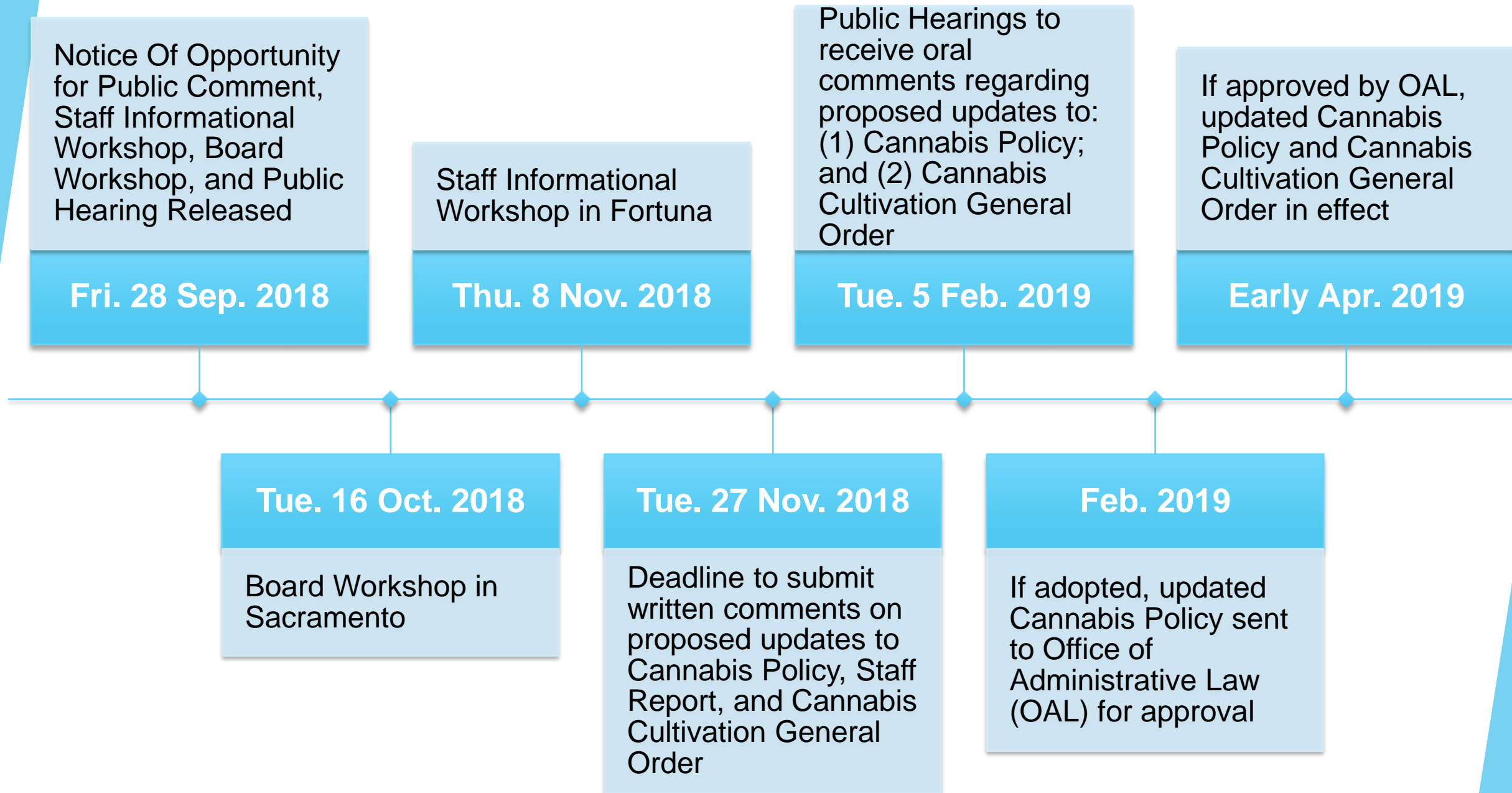
Existing Flow Requirement Website (Cont'd)

- ▶ Estimated geographic extent of each requirement is represented by yellow layer in GIS mapping tool
- ▶ Clicking on layer provides an overview of flow requirement for applicable stream reach



Timeline and Next Steps

Timeline and Next Steps



Public Participation

- ▶ How can you participate?
 - ▶ Participate in workshops
 - ▶ Submit written comments
 - ▶ **Deadline to submit comments is:
12:00 PM (noon) on Tuesday, November 27, 2018**

- ▶ Email: commentletters@waterboards.ca.gov

- ▶ Written Correspondence:

State Water Resources Control Board
Clerk to the Board
Attn: Jeanine Townsend
P.O. Box 100
Sacramento, CA 95812-0100

Important Webpages

- ▶ **Water Boards Cannabis Programs Homepage:**

<https://www.waterboards.ca.gov/cannabis/>

- ▶ Access Notice, Draft Policy, Draft General Order, and Draft Staff Report (out for public comment)

- ▶ **Water Boards Cannabis Cultivation Application Portal:**

<https://public2.waterboards.ca.gov/cgo>

- ▶ Apply for coverage under the Cannabis General Order and file for a Cannabis Small Irrigation Use Registration water right

Contact Information

- ▶ **Cannabis Website**

- ▶ www.waterboards.ca.gov/cannabis

- ▶ **Cannabis Policy Questions**

- ▶ CannabisWR@waterboards.ca.gov

- ▶ 916.341.5363

- ▶ **Cannabis Small Irrigation Use Registration Questions**

- ▶ CannabisReg@waterboards.ca.gov

- ▶ 916.319.9427

- ▶ **Cannabis General Order (WDRs/Waiver) Questions**

- ▶ DWQ.Cannabis@waterboards.ca.gov

- ▶ 916.341.5580



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Questions?